IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7299 OF 2002.

The Chairman,
Shri Mahaveer Co-op. Bank Ltd. ... Petitioner.

V/s.

Shri Bhupal Nana Kichade
and others. ... Respondents.

S.S.Pakale for the petitioner.

P.D.Dalvi for respondent Nos.1 to 9, 11 to 23
and 26 to 29.

CORAM: V.C.DAGA, J.

DATED: 25th November 2005.

P.C.:

. Heard learned counsel for the petitioner.

2. The factual matrix of the case reveals that the petitioner-bank has suffered an order dated 30th March, 2002 passed by the Assistant Commissioner of Labour and Controlling Authority under the Payment of Gratuity Act, 1972 ("Act" for short) while deciding PGA Case Nos.53 to 90 of 1998 and 7 of 1999 and 53 and 54 of 2001. The appeal filed against the said order is pending before the appellate authority under section 7 of the said Act. The grievance of the petitioner is that the appeal preferred by the petitioner is not being decided by the appellate authority. The petitioner in the petition has also challenged

along with the order dated 30th March, 2002 the recovery certificate dated 23rd September, 2002 followed by demand notice dated 11th October, 2002.

3. So far as recovery certificate issued on 23rd September, 2002 followed by demand notice dated 11th October, 2002 are concerned, they are nothing but the step in in the execution of the order dated 30th March, 2002. To challenge the said order dated 30th March, 2002, the petitioner has already filed an appeal and the said appeal is pending before the appellate authority for admission. The appellate authority was expected to take the appeal for admission subject to the compliance of provisions of section 7(7) of the said Act as provided in second proviso to the said section with expeditious despatch.

4. The grievance of the petitioner is that the appellate authority is not taking up the appeal for admission. The prayer made by the petitioner to challenge the order dated 30th March, 2002 cannot be entertained by this Court in this petition since the appeal against the said order is pending. In the circumstances, the appellate authority is directed to take up appeal for admission within fifteen days from today and may take appropriate decision in accordance with

the provisions of the said Act, particularly, in the light of sub-section 7 of section 7 of the Act.

5. Parties to the petition undertakes to appear before the appellate authority on 5th December, 2005. All rival contentions are kept open.

6. Petition, accordingly, stands disposed of. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)